

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION FREE CONFERENCE COMMITTEE ON ENERGY POLICY HOUSE BILLS 632, 474, AND 645

Call to Order: By **CHAIRMAN WALTER MCNUTT**, on April 19, 2001 at 8:05 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Sen. Walter McNutt, Chairman (R)
Rep. Douglas Mood, Chairman (R)
Rep. Roy Brown (R)
Rep. Tom Dell (D)
Sen. Alvin Ellis Jr. (R)
Sen. Don Ryan (D)

Members Excused: None.

Members Absent: None.

Staff Present: Marion Mood, Secretary
Greg Petesch, Legislative Branch
Todd Everts, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted:
Executive Action: HB 632; HB 474; HB 645

Note: This meeting was split into two sessions, one running from 8:05 a.m. to 9:50 a.m., and the other from 1:15 p.m. to 1:50 p.m.

HB 632

VICE CHAIRMAN DOUG MOOD stated that there was some trepidation on the part of the committee as to what **Amendment #HB063220.ate** did to the bill; this had been confirmed in discussions in the interim, and he asked the members to reconsider their adoption of this amendment so it could be stripped from the bill.

Motion: Rep. Mood MOVED THAT ADOPTION OF AMENDMENT #HB063220.ATE BE RECONSIDERED.

Vote: Motion failed with two Representatives (Reps. Dell and Mood) and one Senator (Sen. McNutt) voting aye and two Senators voting no (Sens. Ellis and Ryan); Rep. Brown joined the meeting late.

VICE CHAIRMAN MOOD referred to a spreadsheet passed around by Bob Nelson, Consumer Council, which alluded to a \$70 million risk to residential customers as a consequence to the lifeline rate in HB 632, and asked him where in the bill it said that, and how he arrived at that conclusion. Mr. Nelson stated that his office had prepared this spreadsheet which calculated the potential difference between market rates and lifeline rates. The basis for the calculation was the potential risk since the bill, in their view, did not specify who was to bear the accrued cost for the difference. He repeated that the object of HB 632 was to regulate rates to the point where they were just and reasonable based on generation cost. He felt if that worked, there would not be a problem but if it did not, there would be that rate differential. When the severability clause was inserted, it raised the possibility that the lifeline rate could exist without the commission's regulating the rates at the generator level, exposing parties who were not generators to the risk of that liability. He had discussed this with Mr. Uda who believed that there was a pay back provision which required a pay back for the difference between the interim lifeline rate set by the commission and what the just and reasonable rate ultimately would be. If the commission set a just and reasonable rate on November 30, 2001 which was not substantially different from the lifeline rate, then there would be no pay back liability for those customers, and the Council wanted to bring that to the members' attention. VICE CHAIRMAN MOOD surmised that this spreadsheet was pure speculation. Mr. Nelson replied it was based on assumptions such as market prices and the size of the load returning. VICE CHAIRMAN MOOD asked if he was aware of the harm this spreadsheet had done to HB 632. Mr. Nelson claimed it was their obligation to provide information about a possible outcome.

HB 474

CHAIRMAN MCNUTT announced, since the motion had failed, to move on to HB 474 and announced Amendment #HB047409.agp, EXHIBIT(frs88sb0474a01), requested by him and based on the need for a power authority.

Greg Petesch explained that the amendments were modeled after the power authority which was in SEN. MIKE TAYLOR's bill and

established a Montana power authority, as a state entity. It authorized the power authority to purchase power from a wholesale supplier on a contractual basis as well as purchase electrical generation facilities or transmission/distribution systems; it also authorized them to enter in joint ventures for purposes of financing the construction of a generation facility or distribution system, and enabled the issuance of up to \$500 million of revenue bonds serviced by the energy produced from a facility or the distribution system for purposes of funding potential projects.

SEN. ALVIN ELLIS stated he was not fond of **SEN. TAYLOR's** bill and felt there were substantive differences which he would like to explore. He thought that the state would be facilitating this whereas in this instance, he felt it more likely that it would be the private sector, and that participation was on a contractual basis. **CHAIRMAN MCNUTT** replied that this was correct, the state did not have to run or own it. **SEN. ELLIS** asked if it permitted the state to do it. **CHAIRMAN MCNUTT** said that it did. With these amendments, he wanted to have a broad range of how these projects might develop. He felt that the state would not maintain this long-term because the market demanded quick decisions but he wanted the flexibility to be able to act quickly.

SEN. DON RYAN asked for some time to read through them. **CHAIRMAN MCNUTT** agreed, saying this would be part of the total package. He added that he had chosen revenue bonds for the funding because they would not impact the state's bonding authority.

HB 645

CHAIRMAN MCNUTT announced that there was a "grey bill" for HB 645, saying all the amendments were incorporated in it, and gave the committee a few minutes to look it over. **SEN. ELLIS** wondered if there were any substantive changes over and above what the committee had already adopted, and **Mr. Petesch** said it only reflected amendments adopted to date, and there were no others being brought.

The members took ten minutes to look over the "grey bill".

VICE CHAIRMAN MOOD alluded to some discussions with staff regarding applications for entering the power pool, and said the "grey bill" did not address that issue. **Mr. Petesch** replied page 3, subsection 9 (a) attempted to deal with this by requiring the PSC to establish criteria for participation by buyers and sellers and included the method of allocation of available energy. **VICE CHAIRMAN MOOD** surmised that they had not established criteria but

left it up to the rule making authority, which **Mr. Petesch** affirmed, adding that one provision which was specific was that the method of allocation had to provide a preference to irrigators.

CHAIRMAN MCNUTT added that there was another section, saying it would be offered to everybody. **Mr. Petesch** pointed out that the default supplier, distribution services provider and the public utilities have to make participation available to everyone.

CHAIRMAN MCNUTT commented that the PSC should establish the criteria and it should not be in statute because it would invite a laundry list of complications.

Motion: Sen. Ellis MOVED THAT THE CONFERENCE COMMITTEE REPORT ON HB 645 BE ADOPTED.

Vote: Motion carries with three Representatives and three Senators voting aye.

The meeting was recessed until 9 a.m. so the members could familiarize themselves with the new amendments for HB 474.

HB 474

CHAIRMAN MCNUTT called the meeting to order again and invited comments regarding the issue discussed prior to the recess.

SEN. RYAN asked if **SEN. TOOLE** could speak to this since his SB 502 addressed similar issues. Since he was not present, **SEN. RYAN** took it upon himself to elaborate, saying SB 502 gave a preference to small customers under the premise that we build specifically for a large customer and should he go out of business, there would be incurred cost but no revenue. He asked how this bill would deal with that issue. **CHAIRMAN MCNUTT** did not know where to find that in this bill, and **SEN. RYAN** stated that if the power authority decided to help MRI get back into operation by building generation but the price for copper went bad so that there was no longer a market for their product, and the state's investment still had to be repaid, what were the consequences. **Mr. Petesch** explained that the way this concept worked was that upon a plant closure, the electricity would then be sold either to the default supplier or on the market in order to recover the cost of the bonds.

SEN. ELLIS asked whether this would allow to contract not only with the facility but also with the default supplier for electric supply, and **Mr. Petesch** answered that it did. **SEN. RYAN** thought this was a good amendment because it gave the state a playing chip in negotiating to ensure that the power companies gave us

good prices because now we had the ability to go out and become their competition.

REP. TOM DELL referred to subsection (3) on page 2 of the amendment, and asked why use the DNRC. **Mr. Petesch** answered that the rationale was that if a hydro-facility was constructed, water rights had to be obtained to operate the facility, and this was the DNRC's expertise as well as the administering of other state owned assets. **REP. DELL** felt that this could also be about buying dams, conceding that this was a very broad amendment. He then referred to subsection (6) on page 3, and asked if that membership could buy the dams. **Mr. Petesch** replied this could only happen if the Legislature appropriated the money. **REP. DELL** inquired if a fiscal note cost could be determined. **Mr. Petesch** anticipated that it would only show the administrative cost of the power authority itself, such as the meetings and related per diem, because this did not authorize any specific project.

SEN. RYAN asked **SEN. KEN TOOLE** about the difference between his SB 502 and these amendments. **SEN. TOOLE** stated that conceptually, the biggest difference was that his bill focused on supplying the small customer class; if there was excess power, it could be sold off-system to the large industrials, but its first priority was to sell to the default supplier. Its intent was to sell to distribution companies with a small-customer base such as cooperatives, investor owned utilities or the default supplier. The reason behind it was that the more the default supplier relied on the large industrials, the more risk they assumed.

{Tape : 1; Side : B}

SEN. RYAN wondered if there was any need to prioritize or should it be left up to the power authority's discretion. **CHAIRMAN MCNUTT** responded that the bill said to offer cost-based electricity to Montana customers, and he would be comfortable to leave it up to the authority.

SEN. ELLIS stated that in addition, the security of the contracts which the authority was able to garner would have a great deal of influence on the rate they could get on the bonds as well as the degree of trust the Bond Council would have in this system.

REP. DELL feared that there were tremendous unintended consequences; while he recognized that they were facing problems and had to make tough decisions for the next two years, he realized that generating electricity would become extremely competitive in two years with the new generation encouraged by this Legislature, and if the state held those dams, they would become unproductive assets in two years. He felt that with this bill, they were turning a short-term crisis into a long-term

problem. He recalled that this same idea had been proposed earlier and failed, and he objected to bringing it forth again at the twelfth hour.

Motion: Sen. McNutt MOVED THAT AMENDMENT #HB47409.ATE BE ADOPTED.

Discussion:

VICE CHAIRMAN MOOD stated that the activities allowed in these amendments were broad, and one should not assume the state would go into the generation business; he felt this was a good element to have in the mix, and he would support it.

CHAIRMAN MCNUTT did not think the bill said the state would go out and buy hydro-dams but envisioned it would broaden the state's capabilities.

Vote: Motion carries with two Representatives and three Senators voting aye; Rep. Dell voted no.

Todd Everts offered to explain an amendment requested by **SEN. FRED THOMAS** which was highly technical in nature and dealt with the USB program. He had not drafted it yet but wanted to familiarize the members with it because of the time constraint. He stated that it would alter the base year from 1995 to 1998, or some three year rolling average prior to the current year assigned to a company. This would increase the amount of the USB by about \$700,000 which would be funneled into low-income by raising the percentage they get from a 17% minimum to a 25% minimum. He stated he was working with 69-8-402, and the next amendment would restrict the large customers' ability to self-direct the credit they received by one half, and that would generate about \$1.25 million which would go into the USB pool and be directed into irrigation.

VICE CHAIRMAN MOOD wondered what kind of mechanism would be used; if irrigators would be reimbursed. **Mr. Everts** stated he was still working on what the mechanism would be, but the purpose was to lower irrigation power cost.

REP. DELL appreciated it raising the amount for low-income but wondered if it did anything in terms of money put towards conservation programs. **Mr. Everts** replied that with moving the base year up, the fund was increased by \$700,000 which, in turn, represented the low-income increase.

Motion: Rep. Dell MOVED THAT THE CONCEPTUAL AMENDMENT BE ADOPTED.

Discussion:

Patrick Judge, MEIC, commented that he thought this rolling year average was already established in 1999. **Mr. Everts** replied that there was an annualized basis in 1999; but the 2.4% base was initially for the calendar year 1995. He felt by moving the base year, it would bring that increase of \$700,000. **Patrick Judge** stated that if it was based on each years' annual retail sales, it would bring in the expected amount if a growth in earnings was expected, and the MEIC would not object; if there was a decline in sales, it could have the opposite effect.

Donald Quander, Montana Large Customer Group, stated he was not familiar with this particular amendment but wanted to comment on the USB program in general. He stressed that one of the most effective parts of this program were the industry's self-directed fees. That money had been used predominantly for energy-efficiency at facilities, and it was undebatable that the first round of commitments that were made were exactly in the direction which was encouraged. The ability to self-direct some of the amounts not directed at efficiency to low-income energy assistance such as Energy Share had been a very useful tool to that program of which he was a board member. He stressed that the contributions from industry through the self-direct program to Energy Share had been very important over the last two years. He urged the committee not to limit the ability of industry to continue to self-direct USB funds to those much needed programs.

CHAIRMAN MCNUTT asked how much money he was talking about. **Mr. Quander** replied on MPC's system, about \$3 million was available of which about \$100,000 was not self-directed. He speculated that about \$250,000 of that was given to low-income assistance. The remainder was spent on qualifying energy-efficiency projects at the facilities involved. The contributions were on record with the DOR and none of them had been challenged as being inappropriate.

REP. BROWN asked if these amendments limited the ability of large customers to self-direct. **Mr. Everts** replied that the concept he was working on would state that they could receive credit up to one-half of the USB obligation and the other half would flow into the general pool; of that portion, about \$1.25 million or less would be directed through a mechanism to lower the cost for irrigation. This would limit the ability of the large customers to self-direct by one-half.

CHAIRMAN MCNUTT repeated that by changing the base year, it would increase the amount by \$700,000 which then would be given to low-income. **Mr. Everts** confirmed that was the number he had been

given. **CHAIRMAN MCNUTT** was trying to do a comparison between that number and the one given by **Mr. Quander**. If this all went to low-income, the net increase would be about \$450,000. **Mr. Everts** cautioned that his numbers were conceptual, and the committee should wait until he had accurate information.

CHAIRMAN MCNUTT said because of the magnitude of the numbers, he would advise to wait until the amendment was in its final form, and **REP. DELL** withdrew his motion.

Mr. Everts stated it was one section he needed to work on, but the calculations and making sure that they all fit would be time consuming.

REP. BROWN asked to also include numbers in terms of conservation and weatherization.

SEN. RYAN mentioned the schools which had opted out and were now wondering how to get back into the default supply and asked where government entities would fall into that, saying he would like to see that addressed as well in HB 474.

David Hoffman, PSC, stated that government entities would not be required to bond to get back onto the system, adding that there was no language addressing that.

The meeting stood adjourned until 1:00 p.m.

{Tape : 2; Side : A}

HB 474

CHAIRMAN MCNUTT called the meeting to order at 1:10 p.m. and introduced **Amendment #HB047411.ate**, **EXHIBIT(frs88sb0474a02)**, asking **Todd Everts** to go over them.

Mr. Everts explained that there had been a change on page 5, Section (4), where he had included reducing energy costs of irrigated agriculture in Montana as a part of these programs. He stressed that the real meat of the amendments started at the bottom of page 5 through page 7, and these changes were that beginning in 2002, in order to make it a clean start, contributions were based on 2.4% of each utility's annual retail sales in the state for the calendar year ending December 31, 1995 for those utilities who had not filed a transition plan, and December 31, 1998 for all other utilities. He stated that the net impact for cooperatives or MDU who have not filed transition plans, the base funding level stayed at the status quo; for all others, the base year changed, and this increased the funding

requirement. The other significant changes started at the bottom of page 6, subsection (5) where it said for a utility that had filed a transition plan, the percentage level for low-income energy assistance increased from a minimum level of 17% to 25%. New funding requirements for irrigated agriculture were on page 7, subsection (6), and they were at 13%. Should there be any money left over after the utility utilized its internal credits, it would go into a fund as established in 69-8-412 to provide for reductions in energy costs for irrigated agriculture, administered by the Department of Agriculture. The last significant amendment could be found under (8) on page 7, where it stated that the large customer must receive credit of up to 50% of their USB charge each year; the remainder was funneled into the utility pool. With regards to the chairman's request, he had asked **Will Rosquist** to research and provide the numbers he asked for.

Mr. Rosquist, PSC, explained that he ran the numbers for MPC and the impact the amendments would have on their Universal System Benefits Program. Under the current 1995 base year, at 2.4% of retail revenue, he arrived at about \$8.6 million which was the basis for the USB rates; if they were based on 1998 retail revenue, it would produce approximately \$9.3 million which would provide about \$2.3 million for the low-income energy program, based on the proposed increase of 25%; applying the 13% for irrigation, that would net about \$1.2 million. For the calendar year 2000, the large companies self-directed about \$1.5 million. He also mentioned that the PSC had allocated a greater percentage than what current law required from MPC, which amounted to \$1.8 million; added to that the amount the large industrials self-directed and contributed to low-income programs which was \$65,000, the total would be \$1.9 million. This calculation presented an increase, as applied to MPC, of \$450,000 to \$510,000 for the low-income funding, based on the provisions in the amendments.

Greg Groepper, Energy Share, stated that Flathead Electric Coop. contributed about \$85,000 through self-directed credits to the low-income program; if that was cut in half, he felt there would not be any money. He said that in the past, they would receive about \$200,000 which the large customers had not spent and which went back to MPC at the end of the year, and he expected that would be disappearing as well because it would be going towards irrigation. He felt that Energy Share would lose about \$600,000 based on these amendments, because the large industrials would use their credits first for their self-directed programs for conservation, and they would have to go to MPC and ask for a share of the additional revenue or ask the PSC to make Energy Share whole.

CHAIRMAN MCNUTT asked where he came up with the \$600,000. **Mr. Groepper** replied it was partially based on **Mr. Rosquist's** calculation plus the approximately \$200,000 the large companies did not spend which, by PSC rule, had to go to low-income. He figured that half of the companies' money went towards their own programs, and the residual would not be available for Energy Share.

CHAIRMAN MCNUTT argued that his numbers added up to \$285,000 coming from Flathead Electric and other large customers, and based on **Mr. Rosquist's** numbers, there should have been an increase of \$450,000 to \$510,000; subtracting \$285,000 from \$450,000, left a net increase in the funds available. **Mr. Groepper** replied that he agreed that there would be a net increase, but the funds given to low-income now would have to be discounted because they would disappear. He repeated that unless the PSC would direct monies from the additional revenue to Energy Share, they would be negatively impacted by these amendments.

SEN. RYAN asked whether Energy Share was means-tested. **Mr. Groepper** stated that the private money, about \$170,000 annually, was not; the funds donated by cooperatives and large customers through the USB program amounted to about \$550,000 last year. This portion had a test in statute, stating that a family's annualized income had to be at or below 150% of poverty, or there could be documented, special case exceptions. **SEN. RYAN** asked him to comment on the LIEAP program. **Mr. Groepper** replied that this program was federally funded and run by DPHHS; Energy Share had nothing to do with that but he knew that their requirements were that the annual income had to be at or below 125% of the federal poverty guidelines, and traditionally, Energy Share filled the gap that LIEAP did not address.

Donald Quander, Montana Large Customer Group, urged that this amendment not be passed in its current form. He charged that the basic support to this program had been predicated on the ability of the large customers to self-direct those funds, and that it would be exceedingly ironic, at a time where those customers were asked to reduce their load, to take away what had been the single most effective incentive in their introducing energy efficiency in their plants. He mentioned the additional impact on low-income programs which already had been described, concurring that there would be less money available for that as well as for energy efficiency spending which translated into more demand for power rather than less. He argued that at a time where we were hard-pressed to provide financial relief to these same industrial customers with respect to unaffordable energy prices, we now took away half of the credits from an existing program used to become more energy efficient. He understood the desire to lessen the

impact on Montana's irrigators as well as other customers because they were facing a crisis, but if the committee wanted to soften the impact, he suggested to simply allocate a portion of the USB fund to irrigators.

CHAIRMAN MCNUTT asked, if the committee was to allocate funds to irrigation, did he foresee that the large industrials would contribute to that as well. **Mr. Quander** elaborated that all customers were currently paying into the USB fund; if a company had an obligation of \$100,000, to the extent they were able to document qualifying energy efficiency programs or contributions to a qualified low-income energy assistance program, they would receive matching credits, and they never drew more than they paid in. Under the current proposal, they would still pay the \$100,000 but in the future, they would only be able to self-direct or get a credit for \$50,000, with the difference being directed to Montana irrigators.

Patrick Judge, MEIC, stated they would support changing the base year in that it would increase the amount of USB funds as well as directing the increase to low-income energy assistance. He objected to the second part of the amendments because it reduced conservation dollars, saying that the large industrials make the most efficient use of the conservation monies. He concurred with **Mr. Quander** in asking to simply allocate funds to the irrigated agriculture by maybe increasing the percentage from 2.4% to 2.7%, as long as it did not take funds away from the other programs.

Haley Beaudry, CFAC, stated that his company was capped at \$500,000 USB per year, even if they were running at half their capacity when they returned to work. This amendment would require them to send in a check for \$250,000, taking this money away from the company at a time they were trying to resume operations; it would also do away with their USB credits against conservation efforts. In 1995, Flathead Electric provided 10 megawatts to CFAC; in 1998, it was 137 megawatts, which meant that the change in the base year would increase the hit on this entity fourteen times, and they were not even providing power to the plant anymore. In closing, he stated that by this amendment, it would take cash from a company trying to survive and giving it to another party trying to survive.

Motion: Sen. Ellis MOVED THAT AMENDMENT #HB047411.ATE BE ADOPTED.

Discussion:

SEN. ELLIS stated he was not fond of the vehicle used to address this cause but did not have a better one and felt this issue needed to be dealt with.

REP. DELL felt this was robbing Peter to pay Paul, and he would not support it. He sympathized with the irrigators' predicament but felt the USB program should not be used to address this.

REP. BROWN agreed, feeling that everybody lost under this proposal.

VICE CHAIRMAN MOOD concurred, saying to include one more entity at the expense of the USB program did not accomplish anything.

Vote: Motion failed, with three Representatives and two Senators voting no; Sen. Ryan voting aye.

{Tape : 2; Side B}

CHAIRMAN MCNUTT announced that there were two technical amendments, **#HB047412.agp**, **EXHIBIT(frs88sb0474a03)** and **#HB047411.agp**, **EXHIBIT(frs88sb0474a04)**.

Mr. Petesch explained that this was a change to an already adopted amendment, and it allowed the Department of Administration and the PSC to adopt emergency rules because under the provisions of the old language, those rules could not have been in place by July 1, 2001.

Motion: Sen. McNutt MOVED THAT AMENDMENT #HB047412.AGP BE ADOPTED.

Discussion:

SEN. ELLIS wanted clarification that "page 13" meant "page 13" of the previous amendment, and not the bill. **Mr. Petesch** confirmed this.

SEN. RYAN wondered if there would be any time for public input allowed on how these rules were adopted. **Mr. Petesch** replied that there would be time; emergency rules allowed to expedite notice and hearing requirements, and were limited to 120 days. This, in effect, allowed them to begin the normal rule making process with full notice and full comment period while, at the same time as they were proposing the emergency rules, so they could get the program up and running by July 1, 2001.

Vote: Motion carries, with three Representatives and three Senators voting aye.

Mr. Petesch explained **Amendment #HB047411.agp**, saying that HB 47 which was part of the in-state investment program as was part of HB 474. HB 47 amended existing law, referencing a section of

code which, he was embarrassed to point out, did not exist. This amendment corrected that deficiency so investments could be made pursuant to the sections which authorized investment.

VICE CHAIRMAN MOOD inquired what would happen if this amendment was not adopted. **Mr. Petesch** replied that the program has been operating, he just was not sure what authority the board had been using.

Motion: Sen. Ellis MOVED THAT AMENDMENT #HB047411.AGP BE ADOPTED.

Vote: Motion carries, with three Representatives and three Senators voting aye.

CHAIRMAN MCNUTT announced that the committee had completed their work on HB 474.

Motion: Sen. Ellis MOVED THAT THE CONFERENCE COMMITTEE REPORT BE ADOPTED.

Discussion:

VICE CHAIRMAN MOOD proclaimed that he would not support this motion because he strongly objected to the language in the amendments adopted as **#HB047406.agp**. He added that he would support it if there was a chance of stripping them off.

REP. DELL echoed **VICE CHAIRMAN MOOD's** comments, stating he did not intend to vote for this either, primarily because he felt the committee had not succeeded in accomplishing their goals.

Vote: Motion fails, with one Representative and three Senators voting aye; Reps. Mood and Dell voted no.

ADJOURNMENT

Adjournment: 1:50 P.M.

SEN. WALTER MCNUTT, Chairman

MARION MOOD, Secretary

DM/MM

EXHIBIT (frs88sb0474aad)